

General Information

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Program Description (VCP, brownfields, or related)

Brownfields definition: Illinois defines a brownfields site or brownfields to be a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment. Environmental Protection Act, Title 17, Section 58.2.

Program titles:

- Site Remediation Program
- Office of Brownfields Assistance
- Leaking Underground Storage Tank (LUST) Section
- Permit Section—Corrective Action Unit

Liability relief provisions:

- Site Remediation Program (SRP) (1989, revised 1996)—Offers No Further Remediation (NFR) letter after cleanup meets the risk-based Tiered Approach to Correction Action Objectives (TACO)
- LUST Section—NFR letter
- Permit Section—Corrective Action Unit—No Further Action (NFA) letter

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfields Redevelopment Loan Program
- Municipal Brownfields Redevelopment Grant Program
- Brownfields Cleanup Revolving Loan Fund
- Bank Participation Loan Program
- Property Tax Credit in Cook County
- Hazardous Waste Fund
- Environmental Protection Fund

Legislative or program site eligibility requirements:

Generally any site not required to clean up under any other program (e.g., Resource Conservation and Recovery Act (RCRA), Superfund) is eligible for the Illinois Site Remediation Program.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Brownfields Redevelopment Loan Program offers \$10,000,000 low-interest loans to local governments and private parties, to cover brownfields site investigation, remediation, and demolition costs. To be eligible for a loan, applicant must enroll site in the Site Remediation Program and investigation/cleanup activities must be approved.
- Municipal Brownfields Redevelopment Grant Program offers municipalities grants of up to \$240,000 for investigation and cleanup of brownfields. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. Grant funds are awarded to the municipality, but can be used at privately held property. The grant has a 70/30 match requirement.
- Brownfields Cleanup Revolving Loan Fund offers \$3,500,000 for stipulated loans up to \$425,000 per site to municipalities to clean up former industrial commercial or industrial sites. Sites must be enrolled in the Site Remediation Program and investigation/cleanup activities must be approved. Municipality must own the site.
- Bank Participation Loan Program (in Chicago) offers up to \$250,000 or \$350,000 for commercial and industrial loans (respectively) that are matched by banks at 75% of prime rate, for terms from three to 15 years.

Tax incentives (abatelements, credits, etc.): No information available

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Program Elements

Technical Elements

Methods/standards/controls:

- Formal objectives based on Risk-Based Corrective Action (RBCA) and EPA Soil Screening Levels (SSLs) in place; applicant has a choice of cleanup standards.
- The state employs background levels, water quality criteria, Maximum Contamination Level/Maximum Contamination Level Goals (MCLs/MCLGs), ground water standards, soil standards, and land use based standards in conjunction with risk assessments to determine cleanup levels. The state uses TACO approach. The first tier employs traditional National Priorities List (NPL) standards such as state promulgated soil standards and MCLs. The second tier provides for consideration of cutoff pathways, while the

third tier consists of risk-based standards. Cleanup standards are based on relative risks to human health using TACO with a 10^{-6} carcinogenic risk goal for residential and a 10^{-4} to 10^{-6} risk goal in general.

- The state uses deed restrictions and NFR letters as institutional controls to ensure that specified land uses are maintained in the future.

Contaminants covered/excluded: Petroleum and all hazardous substances are included.

Institutional controls allowed under TACO and may include engineered barriers, ground water restrictions, highway authority agreements, and land-use restrictions.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): No information available

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: April 1995

Costs to enter program or fees for service: User fees based on personnel costs, overhead, travel, lab costs, etc. Fees on hazardous waste treatment/disposal fund state participation.

Funding source for administrative costs and staff:

- The IEPA, Bureau of Land, Division of Remedial Management administers the state brownfields and cleanup programs. The Voluntary Site Remediation Unit within the Division of Remedial Management administers the voluntary cleanup program.
- The Site Remediation Program is funded through applicant user fees. Other remedial activities are funded through cost recovery actions, the solid waste tipping fees, and federal funding.

Cleanup Activities

Sites currently in VCP: 840 sites as of July 15, 2004 are in pursuit of completion letters.

Sites completed under VCP: Since 1989, 2,401 VCP program enrollments and 1,374 completion letters issued. In 2001, 292 sites enrolled; 220 completion letters issued.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): No information available

Public Participation

Public participation requirements (notice, comment periods, etc.): Illinois only has formal requirements for public participation at sites intended for use as schools in the Site Remediation Program. Public participation at other sites is recommended on an ad hoc basis.

Public participation activities (hearing, meetings, etc.): Illinois Brownfields Conference, May 11–12, 2004.

Statutory Authorities

- The *Environmental Protection Act*, Title XVIII §58 (1970, amended every year from 1983, 1993, and 1995, 1996), establishes the Hazardous Waste Fund for state site cleanups and provides for enforcement, contaminated property transfer, and voluntary cleanups.
- The *Responsible Property Transfer Act*, Public Act §86 679 (1988), mandates a seller to disclose information regarding contamination on sites.

General Information

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Program Description (VCP, brownfields, or related)

Brownfields definition: Indiana defines in statute a brownfields site as a parcel of real estate that:

- Is abandoned or inactive; or
- May not be operated at its appropriate use; and
- On which expansion, redevelopment, or reuse is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment.

Program titles:

- Brownfields Program (1997)—Mechanism for state to partner with communities to promote cleanup and redevelopment. The main goal is to help communities identify and mitigate environmental barriers that impede local economic growth by offering government assistance for the assessment, cleanup, and redevelopment or reuse of brownfields properties to revitalize communities.
- Voluntary Remediation Program (1993)—Main goal is to provide government approval for privately funded remediation projects, some of which may be considered brownfields.

Liability relief provisions:

- Brownfields Program offers Comfort and Site Status letters to address liability issues; highest forms of “comfort” or “closure” offered at this time, even for sites remediated with federal or state brownfields funds, unless the sites enter the VRP for a Certificate of Completion (COC) or Covenant Not to Sue (CNTS).
- VRP offers highest form of liability protection through a COC issued by IDEM, followed by a CNTS from governor’s office; contaminated sites that are not subject to enforcement action or considered an imminent threat to human health may participate.

Financial incentives (grants, loans, tax provisions, etc.):

- Federal Brownfields Cleanup Revolving Loan Fund (RLF) (grant to IDEM to loan*)
- Federal USTfields (Underground Storage Tank) grants (to IDEM as co-applicant for two communities)
- State Environmental Remediation Revolving Loan Fund (ERRLF)
- Brownfields Site Assessment Grant Incentive (SAGI)*
- Brownfields Petroleum Remediation Grant Incentive (PRGI)*
- Brownfields Low-Interest Loan Incentive (LILI)*
- State Brownfields Voluntary Remediation Tax Credit (VRTC)*
- State Urban Enterprise Zone Brownfields Site Assessment Grant Program**
- State Community Development Block Grant (CDBG) Brownfields Program**

- IDEM Excess Liability Fund (ELF)—not specific to brownfields, for tank owners that pay/have paid into the fund
- * IDFA program/fund manager in cooperation with IDEM
- ** IDOC program/fund manager, in cooperation with IDEM

Legislative or program site eligibility requirements:

- Entry to the VRP is open to any site unless an enforcement action is pending, the site is a substantial and imminent threat, or a federal grant requires action. Responsible parties may apply. The Brownfields Program generally follows these standards in evaluating eligibility for technical assistance. However, assistance is not available to entities that caused or contributed to any site contamination.
- The Brownfields Program also works under the directives of *Senate Enrolled Act 360 (1997)*, *House Enrolled Act 1909 (1999)*, *House Enrolled Act 1935 (2001)*, *Senate Enrolled Act 273 (2001)*, *Senate Enrolled Act 170 (2001)*, *Senate Enrolled Act 321 (2001)*, *Senate Enrolled Act 339 (2001)*, *federal HR 2869 (2001)*, *House Enrolled Act 1714*, and *Senate Enrolled Act 207*.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- EPA-capitalized Brownfields Cleanup RLF for \$350,000 (1997), increased in 2000 to \$1,000,000; available to provide low interest loan to eligible communities/private sector for cleanup/non-time critical removals per Comprehensive Environmental Response Compensation and Liability Act (CERCLA); IDFA serves as fund manager. In 2003, the maximum amount of funds were loaned to the City of South Bend for an abandoned landfill to be redeveloped into the Fredrickson Park Environmental, Educational Center. Indiana is the first state to loan RLF funds. Should another eligible project come to the state's attention and be proposed to EPA, additional federal RLF funds may be available for another loan.
- In 1997, state ERRLF (or the Brownfields Fund) established through legislation—\$10,000,000 over three years to eligible cities, towns, or counties (with funds having been reallocated to date); grants for IDEM approved assessments; loans for IDEM approved assessments or remediation (including demolition); applicants evaluated for several criteria, including ability to repay, matching funds available, and economic development potential; 50% allocated to jurisdictions with fewer than 22,000 people. IDFA/IDEM partnership.
- On July 1, 1999, extra \$5,000,000 was added through legislation to the ERRLF for forgivable loans; 20% of the ERRLF loan may be forgiven for projects meeting community-determined economic development goals,

with priority given to former gas station or UST sites, or facilities located within one-half mile of a child care center or school. IDFA/IDEM partnership.

- ERRLF applicants may partner/co-apply with private entities that did not cause or contribute to any contamination. ERRLF loan recipients may re-loan money to an eligible private entity, with 20% of the loan forgiven if it meets criteria (noted in the first column); referred to as the third-party model.
- Changes/clarifications to the ERRLF program/incentive include: 1) allocation of funds to jurisdictions based on populations above or below 22,000 vs. 35,000; 2) Just In Time Funding where \$50,000 is available annually outside the normal grant rounds (but as part of the \$1,000,000 now available per calendar year) to fund Phase II site assessments only that would enable immediate economic development project needs. A city, town, or county must match these grant dollars one for one and must certify that a company or developer is imminently interested; 3) clarification that SAGI funding for remediation costs and retroactive funding (reimbursement) for prior testing are not allowed; 4) increase in SAGI funds available (\$7,500 maximum for Phase I activities per site per round and \$50,000 for Phase II activities per site per round, totaling \$1,000,000 per year) and in funding rounds (from two to four per year); and 5) Community Revitalization Enhancement District (CRED) added as target area, increased emphasis on local matching funds and on local brownfields efforts. IDFA/IDEM partnership.
- In March 2000, IDOC began state Urban Enterprise Zone Brownfields Site Assessment Grant Program; IDEM oversight provided through working draft Memorandum of Understanding (MOU). Total of five grant rounds held to date.
- September 2001, IDOC began CDBG Brownfields Pilot Program with grants available for planning, remediation, and site preparation, and tax credits available for rehabilitation; IDEM oversight provided through working draft MOU. Total of three grant rounds held to date.
- The relatively new Brownfields Petroleum Remediation Grant Incentive (PRGI) is a result of the 2001/2003 state budget transfer of \$9,000,000 from the IDEM Excess Liability Fund (ELF) to ERRLF for remediation of petroleum contamination at brownfields sites. In August 2002, PRGI implemented through IDFA/IDEM partnership. First state grants available for remediation of brownfields sites. Total of four grant rounds to date. IDFA/IDEM partnership.

Tax incentives (abatements, credits, etc.):

- Brownfields Revitalization Zone tax abatements—available in locally designated “brownfields zones.”
- 2001 legislation provides tax credit of up to \$100,000 for voluntary remediation of a brownfields, effective through December 31, 2003, and capped at \$1,000,000 annually statewide.

Indiana

- 2003 legislation provided the Voluntary Remediation Tax Credit (based on 2001 legislation) to any taxpayer that meets the statutory requirements and is subject to one or more of the following Indiana taxes: the state gross retail and use tax, the adjusted gross income tax, the financial institutions tax, and the insurance premiums tax. Eligible remediation projects may, but are no longer required to, enter the IDEM VRP to receive the tax credit. IDFA/IDEM partnership.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The Indiana Interagency Brownfields Task Force is an affiliation of state and federal agencies dedicated to the promotion of responsible brownfields redevelopment. The Task Force member agencies may offer financial and/or technical assistance for brownfields redevelopment projects, especially at the end-use stage. The Indiana Brownfields Advisory Team (IBAT) formed in April 1998, consists of members of the Task Force and is available to public and private stakeholders expressing interest in brownfields redevelopment. The IBAT provides technical assistance on a site-by site, multiple site, or community-wide basis. IDEM staff administers the Indiana Interagency Brownfields Task Force and coordinates all Task Force and IBAT activities.

Program Elements

Technical Elements

Methods/standards/controls:

- Risk-based process (Risk-Based Corrective Action-like) in place. State's "Risk Integrated System of Closure" (RISC) non-rule policy, which allows for consistent, risk based standards among all IDEM cleanup programs, completed its one year transition period in February 2002, through which time either RISC or VRP standards could have been used.
- Indiana has developed default risk-based closure criteria for soil and ground water and allows for site-specific risk assessments to determine alternative closure levels.
- For voluntary cleanup sites, the state employs water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), ground water standards, and soil standards in conjunction with risk assessment to determine cleanup levels.
- Land use is considered in determining cleanup levels for state and voluntary cleanups. Future land uses are considered either residential or industrial. A party must control the site to select industrial use. Indiana uses restrictive covenants recorded on deeds as institutional controls for maintaining specified land uses.

Contaminants covered/excluded:

- Both programs cover hazardous substances and petroleum. Default closure standards have been developed for approximately 150 common constituents, excluding asbestos and polychlorinated biphenyls (PCBs).

- In Brownfields Program, asbestos, lead paint, and PCBs are OK, as well as petroleum (for state and federally funded projects) now under the new brownfields definition.
- In VRP, petroleum and PCBs are OK; no asbestos or lead paint.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):

Both programs generally view institutional controls as acceptable. Institutional controls are considered under RISC when determining remediation-type activities. Brownfields Program Comfort/Site Status Letters may indicate land-use restrictions as necessary. Institutional controls may be approved on a site-by-site basis. Land-use restrictions are enforced through Environmental Restrictive Covenants. Sites with institutional controls are tracked by each program, respectively, and are monitored as staff resources allow. While VRP maintains its own institutional control database, an office-wide institutional control database is being developed that the VRP (and possibly the Brownfields Program) will eventually be linked to.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: December 1995

Costs to enter program or fees for service:

Brownfields Program is free, and costs for services are currently not recovered from program participants.

VRP is funded through application fees of \$1,000 (municipalities are exempt) per site and through applicant agreements to pay additional state costs. State costs for voluntary cleanups generally range from \$5,000–\$20,000. VRP recovers costs for project administration, technical evaluation, confirmatory sampling, and travel.

Funding source for administrative costs and staff:

The Office of Land Quality in the IDEM, employs approximately 50 full-time equivalent (FTE) staff in the Brownfields Program and VRP, including science services/technical support staff (e.g., Chemists, Geologists, etc.). Legal support is provided by a total of four (primarily two) FTE attorneys in the Office of Legal Counsel. Staffing and administration are primarily funded by the state general fund, the state cleanup fund, and federal grants/cooperative agreements.

Cleanup Activities

Sites currently in VCP: As of August 2004, 588 VRP applicants and 369 Brownfields Program sites.

Sites completed under VCP:

- For the VRP, 510 active and completed sites.
- For the Brownfields Program, approximately 83 Comfort/Site Status Letters or Comment Letters issued, 42 Brownfields Environmental Assessment sites completed or referred, 165 grants awarded, 21 loans approved.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Both programs—Facilitate property transfers and brownfields redevelopment thereby enhancing property values; are voluntary; provide technical assistance; conduct educational and outreach activities; utilize RISC closure levels for cleanup goals; and offer their respective “closure” documents.
- VRP is a fee-based program that offers a COC and CNTS through the governor’s office for sites that have been remediated through VRP; this is the highest level of liability protection offered for media, constituents, and areas addressed.
- The Brownfields Program offers financial and technical assistance. Participation in the Brownfields Program is at no cost. The program offers Comfort Letters and Site Status Letters to address liability issues as appropriate. While these documents do not provide the level of liability protection (i.e., release of liability) as a CNTS, they often facilitate lending transactions and property transfers.

Public Participation

Public participation requirements (notice, comment periods, etc.):

- The Brownfields Program generally has no public participation requirements, except for federally funded projects (e.g., RLF) where such requirements may exist and with which the program must comply.
- VRP requires public notice. Hearings and meetings are held at IDEM’s discretion.

Public participation activities (hearing, meetings, etc.):

- While the Brownfields Program does not require such public meetings/notices, public participation is an important selection factor incorporated in all applications/request forms for receiving technical and financial assistance. There is one site in the program that received federal RLF loan funds where this was a requirement and where the community held several public meetings about the project.
- VRP requires that all remediation work plans (100% of sites) be placed on a 30-day public comment period in the IDEM file room, and in a repository (typically a public library) in the community where the subject property is located before formal work plan approval is granted. Public officials in the affected community (mayor and county health department) are notified when VRP accepts a project into the program, and again when the work plan is placed on public notice. In addition, the VRP Community Relations Plan requires that all program participants notify residents or community groups in close proximity to the subject property if impacts or activities at the site are likely to affect them.

Statutory Authorities

- The *Hazardous Substances Response Trust Fund*, IC §13–25–4 (1986, as amended 1987, 1988, 1989, and 1991), establishes a state cleanup fund and authorizes enforcement actions, and recovery of natural resource damages (NRDs).
- The *Environmental Response Revolving Loan Fund* (IC §13–19–5–5).
- The *Responsible Property Transfer Law*, IC §13–25–3 (1990), establishes disclosure requirements for contaminated property transfers.
- The *Voluntary Remediation of Hazardous Substances and Petroleum*, IC §13–25–5 (1993), establishes a voluntary cleanup program.
- The *Brownfields Revitalization Zone Tax Abatement*, IC §6–1.1–42 (1997), provides for tax rebates under the brownfields program.
- The *Environmental Legal Actions Act*, IC §13–30–9 (1997), establishes citizen suit authority.
- IDEM’s petroleum response authority (IC §13–24–1).
- IDEM’s leaking underground storage tank response authority (IC §13–23–13).
- The Brownfields Program also works under the directives of *Senate Enrolled Act 360* (1997), *House Enrolled Act 1909* (1999), *House Enrolled Act 1935* (2001), *Senate Enrolled Act 273* (2001), *Senate Enrolled Act 170* (2001), *Senate Enrolled Act 321* (2001), *Senate Enrolled Act 339* (2001), *Federal HR 2869* (2001), *House Enrolled Act 1714*, and *Senate Enrolled Act 207*.
- *Legal Actions Act*, IC §13–30–9 (1997), establishes citizen suit authority.
- *Comprehensive Environmental Response, Compensation, and Liability Act*, 42 USC §9601.

Michigan

General Information

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Program Description (VCP, brownfields, or related)

Brownfields definition: Michigan's functional definition of brownfields is any contaminated or potentially contaminated property with a potential for redevelopment. In 88 of the state's urban areas, this includes blighted and functionally obsolete properties as well as contaminated properties.

Program titles: The Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

Liability relief provisions: Completing a Baseline Environmental Assessment (BEA) and submitting it to DEQ prior to or within 45 days of purchase provides an exemption from liability for existing contamination; non-labile new owners must use due care when redeveloping the property; cleanup standards are land-use based. Covenants Not to Sue (CNTS) may be sought, but have largely been replaced with BEAs. Liable and non-labile parties may request approval of a remedial action plan and response activities from DEQ. Liability is based on causation.

Financial incentives (grants, loans, tax provisions, etc.):

- Brownfields Redevelopment grants and loans
- Brownfields Redevelopment Authorities, which have tax-increment financing (TIF)/bonding authority
- Single Business Tax credits
- Clean Michigan Initiative
- Environmental Protection Bond (EPB)
- Cleanup and Redevelopment Fund (CRF)

Legislative or program site eligibility requirements: DEQ enforces joint and several liability standards, and imposes proportional liability where appropriate. In addition, provisions for orphan shares and liability limits are available. The state imposes retroactive liability when it can be proved that a party has caused or contributed to a release. Michigan may impose civil penalties up to \$25,000 per day per violation for failure to comply with an administrative or court order; \$1,000 per day per violation

for failure to comply with a director request; and \$10,000 per day per violation for violation of law or administrative rules. Treble damages are available for failure to comply with an order to abate an imminent and substantial danger from a release.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.): There are two funding mechanisms to investigate and address contamination at brownfields or suspected brownfields in Michigan:

- Local sites prioritized for redevelopment can be addressed with Brownfields Redevelopment grants and loans. The grant and loan programs are funded with \$75,000,000 in bond proceeds, split evenly between grants and loans. Both pay for assessment and cleanup, but a project must have a committed developer to qualify for a grant. A loan may be used when the site has redevelopment potential. Loans have a five-year grace period with no interest and no payments. After the fifth year, 2% interest is charged on the loan balance. Loans can be repaid with tax increments collected by a Brownfields Redevelopment Authority. Grants and loans can be made only to local units of government or quasi-government agencies like Brownfields Redevelopment Authorities and local economic development corporations. About \$30,000,000 was available from these programs in 2004.

Another \$50,000,000 was available for environmental, demolition, infrastructure, and property acquisition costs for redevelopment of waterfront property. Many, but not all, of these projects were brownfields sites. This money has been fully expended.

Similar grant and loan programs were funded under an earlier bond. The Brownfields Redevelopment Grant Program has existed in Michigan since 1992.

- Sites prioritized by DEQ based on threat to public health and the environment and redevelopment potential are nominated and funded annually based on available funding described below. DEQ's Cleanup and Redevelopment Program uses these funds for site investigation, studies and design, operation and maintenance, removal, remedial action, federal Superfund program matches, and state program administration.

The Clean Michigan Initiative (CMI) is a \$675,000,000 bond issue approved by voters in November 1998. It included \$156,000,000 for brownfields cleanup; \$93,000,000 for cleanup of sites with acute hazards; and, as described above, \$75,000,000 designated for grants to local governments and Brownfields Redevelopment Authorities for cleanup of sites with redevelopment potential, and \$50,000,000 for grants to redevelop waterfront brownfields.

Appropriations for environmental cleanups from the 1988 Environmental Protection Bond Fund (EPBF) had a balance of \$40,300,000 at the end of FY03, which does not include balances remaining in any of the grant or loan programs. It is anticipated that all of these remaining funds will be obligated to clean up sites by the end of FY04.

The Environmental Protection Fund (EPF) provided appropriations totaling \$32,000,000 in FY02 through FY04 for cleanup activities. Additional appropriations from this fund are not anticipated. The source of funds includes deposits from the sale of royalty interest the state holds in hydrocarbons produced from Devonian or Antrim shale gas wells, qualifying for the non-conventional fuel credit contained in Section 29 of the Internal Revenue Code of 1986.

The CRF is anticipated to be a consistent source of revenue for cleanup activities. The amount of CRF set aside for cleanups is 80% of 75% of the total amount of unredeemed deposits on carbonated beverage bottles. This has averaged between \$8,000,000 and \$14,000,000 a year, including interest.

Tax incentives (abatelements, credits, etc.): A 10% single business tax credit (with a \$1,000,000 cap) for an innocent party's development costs (not cleanup costs) on a property is included in the brownfields plan of a Brownfields Redevelopment Authority; credit carries forward for 10 years.

Brownfields credit enacted in 2000, as part of the Obsolete Property Rehabilitation Act, allows the abatement of up to 100% of taxes on real property for up to 12 years when an urban community creates an Obsolete Property Rehabilitation District.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): Brownfields Redevelopment Authorities, which have TIF/bonding authority, also can set up a site remediation revolving fund from tax increments captured after remedial actions are paid for. An amendment in 2000 allows functionally obsolete and blighted properties in select urban communities to use TIF for infrastructure, demolition, site preparation, and lead and asbestos abatement.

Program Elements

Technical Elements

Methods/standards/controls: Risk-based standards in place for soils and ground water (although not a formal Risk-Based Corrective Action (RBCA)) in several land-use categories—residential, commercial, and industrial, and limited uses with institutional controls. DEQ may also approve site-specific criteria.

The DEQ employs background levels, water quality criteria, Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), ground water standards, and soil standards as generic cleanup levels, or uses site-specific risk assessment to determine cleanup levels. The

DEQ uses a risk goal of 10^{-5} for carcinogens and a Hazard Quotient of 1 for non-carcinogens. Future land use assumptions are made based on probability of continued current use, current zoning, and future zoning or intended use as indicated by local governments. The DEQ uses deed restrictions and ordinances as institutional controls to maintain specified future land uses.

Contaminants covered/excluded: Does not restrict sites from the Voluntary Cleanup Program (VCP) on the basis of contaminant; petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Institutional controls are accepted and, with respect to cleanup grants to communities, encouraged as cost saving as well as protection action.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 1996

Costs to enter program or fees for service: Fee of \$750 to request DEQ review and approval of BEAs.

Funding source for administrative costs and staff: Grant and loan programs are administered by the Environmental Science and Services Division of the DEQ. The brownfields programs are administered by one supervisor, one administrative assistant, and three professional staff. Technical expertise and support is provided by staff of the Remediation and Redevelopment Division (RRD) of the DEQ.

The RRD administers the hazardous substance cleanup program. The division employs 234 full-time equivalent (FTE) staff, and legal support is provided by eight FTE attorneys in the Department of the Attorney General, Natural Resources Division. Funding for staff and administration is provided by a combination of the funding sources described above.

Cleanup Activities

Sites currently in VCP: At the end of 2003, there were ongoing activities at 216 sites where the DEQ is paying for response activities prioritized based on threat to public health and the environment.

There were 85 grant and loan projects in progress at the end of 2003.

Voluntary cleanups undertaken without state funding assistance are not tracked by DEQ.

Sites completed under VCP: From 1995 through August 2004, the DEQ received 3,496 BEA petitions, which are reviewed at a cost of \$750. An additional 4,090 disclosures were submitted without a fee or DEQ review.

Michigan

Since 1989, state-funded response actions have been taken at over 1,000 sites. Work has been completed or there is ongoing monitoring at approximately 800 sites.

Since 1992, 258 brownfields and waterfront redevelopment grants and loans have been awarded. Work has been completed at approximately 170 sites.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Since 1992, the DEQ has awarded \$114,500,000 in brownfields and waterfront grants and loans. On sites where benefit information has been available, the DEQ estimates that its grants and loans have generated an estimated 13,000 jobs, helped over 200 businesses locate on redeveloped land, and stimulated \$2,300,000,000 in private investment, as well as over 1,500 housing units on 29 different sites. The private sector has invested approximately 20 private dollars per every dollar of grant funds.

BEAs protect new purchasers from liability for existing contamination. This has greatly facilitated redevelopment of brownfields properties statewide. A property purchaser who does not conduct a BEA before purchasing contaminated property will become status liable for cleanup.

CNTS are available but are uncommon due to the relative ease of conducting a BEA for liability protection.

Tax incentives through Brownfields Redevelopment Authorities and Single Business Tax Credits are available to encourage investment in brownfields property.

Public Participation

Public participation requirements (notice, comment periods, etc.): Michigan requires public notice, public comment, hearings/meetings, and provides for citizen groups where appropriate. The state also allows for informational meetings and press releases for a specific site when necessary.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

Part 201 of the *Natural Resources and Environmental Protection Act*, Public Act 451 of 1994, as amended, establishes a state cleanup fund and provides enforcement authority, a priority list, Natural Resource Damage (NRD) recovery, citizen suits, water replacement, contaminated property transfer requirements, and voluntary cleanups.

General Information

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Major Facilities and Remediation Division
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St. Paul, MN 55155

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Fax: 651 296 9701

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Web site: <http://www.pca.state.mn.us/cleanup/brownfields.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Minnesota uses the EPA definition of brownfields.

Program titles:

- Voluntary Investigation and Cleanup Program (VIC) (1988)
- Agriculture Voluntary Investigation and Cleanup Program (AgVIC) (1993)
- Voluntary Petroleum Investigation and Cleanup Program (VPIC)
- Resource Conservation and Recovery Act Program (RCRA)
- Meth Lab Brownfields Program (2004)

Liability relief provisions:

- VICI Program (1988)—Offers Superfund liability assurance ranging from No Further Action Letters to Certificate of Completion (COC).
- AgVIC Program (1993)—Minnesota Department of Agriculture offers similar assurances as MPCA's VIC program for sites contaminated with agricultural chemicals.
- VPIC approves petroleum development response action plans and offers liability release letters.

Financial incentives (grants, loans, tax provisions, etc.):

Contamination Cleanup Grant Program:

- Departments of Employment and Economic Development (DEED) Contamination Cleanup and Investigation Grant Program.
- MPCA Dry Cleaner Response and Reimbursement Account.
- MPCA Petroleum Tank Release Cleanup Account.
- MPCA Brownfields Assessment Fund.

- Metropolitan Council in Twin Cities region offers brownfields project grants in seven-county area.

Legislative or program site eligibility requirements:

State uses strict, joint and several liability standards, as appropriate, and may impose liability retroactively. State may impose civil penalties up to \$20,000 per day per violation. No punitive damages may be imposed. Liability assurances are offered to parties that investigate and/or clean up contaminated brownfields sites on a voluntary basis. The assurances provide protection from Superfund liability.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Contamination Cleanup and Investigation Grant Program provides \$16,700,000 in FY05 for grants to cities for cleanup at sites with development potential; covers up to 75% of project costs.
- Dry Cleaner Reimbursement Fund reimburses current or former owners and operators for cleanup costs over \$10,000 at dry cleaning facilities that have entered the state's VIC program.
- MPCA approved Minnesota Environmental Response and Liability Act (MERLA) (i.e., state Superfund) project expenditures for FY04 of \$8,700,000, of which approximately \$1,400,000 has been liquidated to date and \$3,900,000 remains obligated or encumbered. Primary sources of MERLA funds are cost recovery and taxes. Minor sources are penalties, interest, and occasional special appropriations. The MERLA fund may be used for site investigation, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) match, studies and design, operations and maintenance, removals, victim compensation, emergency response, grants to local government, remedial actions, program administration, natural resource restoration, and cost recovery.
- MPCA has limited funds available for the assessment of brownfields property that is likely to be developed as greenspace.

Tax incentives (abatements, credits, etc.):

Legislature has limited tax increment financing.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): No information available

Minnesota

Program Elements

Technical Elements

Methods/standards/controls: State uses a risk-based approach that considers planned property use. Minnesota employs surface water quality standards, state drinking water standards, and Maximum Contamination Level/Maximum Contaminant Level Goals (MCLs/MCLGs), in conjunction with risk assessments to determine cleanup levels. Minnesota uses a three-tiered system to conduct site-specific, media-based exposure pathway assessments to select and apply cleanup standards for sites. A 10^{-5} risk level is used for carcinogens, and a Hazard Quotient of .2 is used for non-carcinogens. The same standards apply to state voluntary cleanups. Planned land use is considered in applying cleanup standards. A formal guidance document, *Guidance on Incorporation of Planned Property Use into Site Decisions*, identifies appropriate institutional controls for specific sites with residual contamination. Minnesota uses a variety of institutional controls including the following: affidavits/notification, contractual agreements, easements, and restrictive covenants.

Contaminants covered/excluded: Petroleum contamination is allowed in the VIC if not the sole contaminant. The VIC works with asbestos or lead paint only if there is a release to the environment. Polychlorinated biphenyls (PCB) sites are handled only if contamination resulted from a release prior to 1978.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners):

Institutional controls are used for purposes such as managing residual contamination, maintaining response actions, and notifying future property owners of the presence of residual contamination.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: May 1995

Cost to enter program or fees for service: No information available

Funding source for administrative costs and staff: The MPCA Remediation Division administers the state Superfund program. A total of 34 full-time equivalent (FTE) staff work on the Superfund and the VIC Programs. Minnesota's Attorney General's Office provides legal support for the program with about two FTE attorneys. The state program receives funding from the state cleanup fund. Minnesota's federal grants include a Defense Summary Memorandum of Agreement (MOA) for federal facility cleanups.

Cleanup Activities

Sites currently in VCP: 589 are active.

Sites completed under VCP: Over 1,500 sites are completed.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.):

- Over 3,000 jobs created and a \$3,000,000 increase in the tax base is attributable to brownfields assistance.
- Recent figures from DEED show 13,224 jobs will be created at DEED sites and 5,663 housing units will be created (1,178 deemed affordable housing). Tax-base increases are estimated at \$41,360,000.
- Approximately 5% of all brownfields sites have been reused for parks, open space, or recreational facilities. Private leverage is estimated at almost \$1,000,000,000.

Public Participation

Public participation requirements (notice, comment periods, etc.): Minnesota generally follows public participation requirements under CERCLA for all of its state and voluntary cleanup sites. The state provides for public notice, public comment, hearings/meetings. The state also supports community advisory groups (CAGs) at some sites.

Public participation activities (hearings, meetings, etc.): No information available

Statutory Authorities

The *Minnesota Environmental Response and Liability Act* (MERLA), Minn. Stat. §§115B.01–.24 (1983, as amended 1984, 1985, 1986, 1987, 1990, 1992, 1994, 1995, 1997, and 1998), establishes a state fund and provides for enforcement authorities, a state priority list, Natural Resource Damages (NRDs), and victim compensation.

General Information

Contact: Ohio Environmental Protection Agency (OEPA):
Amy Yersavich, Voluntary Action Program (VAP)

Tiffani Kavalek, Site Assessment & Brownfield
Revitalization Program (SABR)

Ohio Department of Development (ODOD):
John Magill, Office of Urban Development (UD)

Address: Voluntary Action Program or
Site Assessment & Brownfield Revitalization
Program
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Ohio Environmental Protection Agency
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Columbus, OH 43216-1049

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Web site: VAP:
<http://www.epa.state.oh.us/derr/volunt/volunt.html>

SABR:
<http://www.epa.state.oh.us/derr/SABR/sabr.html>

UD: <http://www.odod.state.oh.us/ud/>

Program Description (VCP, brownfields, or related)

Brownfields definition: A brownfields is an abandoned, idled or under-used industrial or commercial property where expansion or redevelopment is complicated by known or potential releases of hazardous substances and/or petroleum.

Program titles:

- Voluntary Action Program (VAP)—created to give companies a way to investigate possible environmental contamination, clean it up if necessary, and receive a promise from the State of Ohio that no more cleanup is needed.
- Site Assessment & Brownfield Revitalization Program (SABR)—serves as the contact for brownfields or contaminated sites not yet in any cleanup program (e.g., VAP, remedial response, Superfund, RCRA corrective action).
- Office of Urban Development (OUD)—assists communities in creating wealth from personal, business, and community successes. OUD works to identify the resources and financing necessary to enhance the economic viability of local communities.

Liability relief provisions: A person undertaking a voluntary action contracts with consultants certified by Ohio EPA to perform investigation and cleanup activities in this program. Once the cleanup is done, the Agency-certified consultant, a certified professional (CP), and a laboratory also certified by Ohio EPA, prepare a No Further Action letter (NFA) to demonstrate that proper investigation and cleanup activities were performed and that no further action is needed. If the data shows that the work was properly conducted, Ohio EPA can issue a Covenant Not to Sue (CNTS), which promises the volunteer that the State of Ohio will not require further investigation or cleanup of the property.

In addition, U.S. EPA and Ohio EPA have entered into a Superfund Memorandum of Agreement for the Voluntary Action Program, called the “MOA Track.” The MOA Track requires volunteers to follow the existing procedures for VAP sites and conduct additional steps. The MOA Track includes more Agency involvement, such as notice of entry into the program, approval of certain documents and work plans, and greater public involvement. Participants who conduct these additional steps have the added comfort of knowing that the cleanup is being conducted under a program that the U.S. EPA has reviewed and determined to be adequate.

Financial incentives (grants, loans, tax provisions, etc.):

- Grant-funded technical assistance
- Clean Ohio Assistance Fund (COAF)
- Clean Ohio Revitalization Fund (CORF)
- Job Ready Sites (JRS) Program
- Brownfield Revolving Loan Fund

Ohio

- Urban Redevelopment Loan Program
- Water Pollution Control Loan Fund
- Ohio Water Development Authority Loans
- Tax exemptions
- Tax credits

Legislative or program site eligibility requirements: Any property is eligible for the VAP except for those already regulated under federal or state law.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Grant-funded technical assistance—<http://www.epa.state.oh.us/derr/vap/guidance/GrantTA/grantta.html>
- Clean Ohio Assistance Fund (COAF)—a \$10 million annual appropriation dedicated to brownfields redevelopment in eligible priority investment areas. Eligible applicants such as local governments, park and joint recreation districts, conservancy districts, soil and water conservation districts, and nonprofit organizations are eligible to receive grants for conservation projects from the Clean Ohio Fund. Applicants must provide a 25% local match. Applicants undertaking projects on properties located in an eligible area may expend the dollars on three activities: Phase I and Phase II Assessments, Brownfield Cleanup, and Public Health Projects. (<http://www.odod.state.oh.us/ud/COAF.htm>)
- Clean Ohio Revitalization Fund (CORF)—art of a \$200 million dollar initiative approved by Ohio voters as part of the \$400 million Clean Ohio Fund. (<http://www.odod.state.oh.us/ud/CORF.htm>)
- Job Ready Sites (JRS) Program – designed to stimulate the development of large parcels of land and/or buildings that will be marketed to attract state economy-shifting development projects. The maximum grant award available per eligible site improvement project is \$5 million. Awarded grant amounts cannot exceed 75% of the total costs of improvements to eligible sites. (<http://www.odod.state.oh.us/edd/obd/jrs/>)
- Brownfield Revolving Loan Fund (RLF) – capitalized by a grant from the U.S. EPA offers below-market rate loans to assist with the remediation of a brownfield property to return it to a productive economic use in the community. (<http://www.odod.state.oh.us/ud/BCRLF.htm>)
- Urban Redevelopment Loan Program – removes development barriers from urban core property so private sector job opportunities can be created. (http://www.odod.state.oh.us/EDD/Loans_Grants.htm)

- Water Pollution Control Loan Fund – issues low-interest loans for water-related brownfield activities, for terms up to 20 years. (<http://www.epa.state.oh.us/defa/comguide.html>)
- Ohio Water Development Authority – extends loans to public or private entities for remediation of property. (<http://www.owda.org/doc/notesall.pdf>)

Tax incentives (abatements, credits, etc.):

- Tax Abatement—upon issuance of a covenant not to sue from the Director of the Ohio EPA for a remedy under the Voluntary Action Program, the Department of Taxation will grant a tax exemption to the property (ORC 5709.87). The exemption, which is issued as an order by the tax commissioner, only covers the increase in the assessed value of land and the increase in the assessed value of improvements, buildings, fixtures, and structures that exist at the time the tax abatement order is granted. The Department of Taxation will send copies of the exemption order to the owner of the property and the County Auditor's Office. The County Auditor's Office maintains the list of properties in the county that are subject to taxes and exemptions. The abatement lasts for 10 years.
- Ohio Enterprise Zone Program—<http://www.odod.state.oh.us/edd/ez/ezsummary.pdf>
- Brownfields Tax Incentive—<http://www.epa.gov/brownfields/bftaxinc.htm>

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): N/A

Program Elements

Technical Elements

Methods/standards/controls: See Ohio Administrative Code rule 3745–300–01 through 3745–300–15 at <http://www.epa.state.oh.us/derr/Rules/rules.html>

Contaminants covered/excluded: Hazardous substances and/or petroleum. Sites contaminated with petroleum not from Underground Storage Tanks (USTs) are allowed entry into the VAP. In general, sites contaminated with polychlorinated biphenyls (PCBs) after 1978, and which exceed 50 parts per million (ppm), are excluded from the program without prior remediation/compliance. Sites containing asbestos and lead-based paint are eligible for the VAP.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Ohio EPA audits at least 25% of the properties taken through the VAP. Engineering controls are maintained through Operation and Maintenance (O&M) Agreements.

If the property's remedy relies on "activity and use limitations" (formerly known as use restrictions) to restrict property use, the volunteer must provide to the CP a "proposed environmental covenant" that complies with ORC §5301.82. The proposed environmental covenant—with its activity and use limitations—is a remedy to support the CP's issuance of an NFA letter.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: July 2001

Costs to enter program or fees for service: The state charges a range of fees to cover its program administration, including program audits.

| | |
|---|-------------|
| CP initial certification | \$ 2,500.00 |
| CP renewal certification | \$ 2,000.00 |
| Laboratories initial certification | \$ 5,000.00 |
| Annual renewal fee for certified labs | \$ 3,000.00 |
| Certification for additional parameter groups, analytes, or methods | \$ 500.00 |
| NFA reviews: | |
| Option 1—Flat Fee | |
| Phase I NFA w/no releases identified | \$ 2,800.00 |
| Phase I NFA with asbestos as the only contaminant of concern identified | \$ 5,900.00 |
| NFA which includes a Phase II Assessment (also includes risk assessment, if applicable) | \$12,000.00 |
| NFA which includes an O&M Plan and Agreement | \$16,600.00 |
| Variance from Applicable Standards (in addition to the other applicable NFA fees) | \$22,400.00 |

Option 2—Pay-As-You-Go Option (PAYGO) allows the costs associated with the NFA Letter review be directly billed to the volunteer. The VAP charges a flat, nonrefundable fee to enter the program under this option. The volunteer submits an "Intent to Enter the VAP" letter to Ohio EPA along with the \$1,000 fee. VAP staff provide a cost estimate and a review schedule to the volunteer following the kick-off meeting. The estimate is based on the anticipated review time needed to review the documents. The current average hourly rate is \$78.55/hour.

In addition, the program may provide technical assistance at an hourly rate to any party participating in the program.

Funding source for administrative costs and staff:

U.S. EPA grant, State Environmental Protection Fee, and fees for service.

Cleanup Activities

Sites currently in VCP: 262 NFAs have been issued by CPs since the inception of the program in 1994. Of these, 17 were withdrawn by the CPs (only allowed early in the program), 15 were denied a CNS by Ohio EPA, 14 did not request a CNS, and 31 are pending. In addition, 126 properties have provided notices of entry into the MOA Track.

Sites completed under VCP: 185 properties have received a CNS from Ohio EPA.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Receiving a CNS has been a major incentive; also, the creation of the COAF and the CORF as a source of funding for communities for site assessment and brownfields cleanup and remediation. The tax abatement has also been an incentive.

Public Participation

Public participation requirements (notice, comment periods, etc.): The VAP is a totally voluntary program thus, no public participation is required. The director's final action issuing a CNS is publicly noticed. However, for the MOA with EPA the CP and volunteer must follow a step-wise process. The first step is the notice of entry stage which requires submitting a Notice of Entry Form, setting up a document repository and public noticing the entry into the MOA Track. There is also a public notice step after the risk assessment and remedial action plan have been completed.

Public participation activities (hearing, meetings, etc.): N/A

Statutory Authorities

- The Ohio Revised Code (ORC) §3734 (*Solid and Hazardous Waste Disposal*) authorizes a cleanup fund and voluntary cleanup activities, and provides enforcement authorities.
- ORC §3745 (*Environmental Protection Agency*) authorizes enforcement activities and citizen suits.
- The ORC §3746 (*Voluntary Action Program*) provides for a cleanup fund, and authorizes property transfer provisions and a voluntary cleanup program.
- ORC §5301 (*Environmental Covenants*) establishes the requirements for imposing activity and use limitations at remediated properties.
- ORC §6111 (*Water Pollution Control*) authorizes enforcement activities.

General Information

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Chief of the Brownfields and Outreach Section

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Remediation and Redevelopment
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Wisconsin Department of Commerce (Commerce)
5th Floor, 201 West Washington Avenue
Madison, WI 53707

Phone: WDNR: 608 267 6713
Commerce: 608 561 7714

Fax: WDNR: 608 267 7646
Commerce: 608 266 8969

Email: darsi.foss@dnr.state.wi.us

Web site: WDNR: <http://dnr.wi.gov/org/aw/rr/>
Commerce: <http://www.commerce.state.wi.us/cd/cd-bfi.html>

Program Description (VCP, brownfields, or related)

Brownfields definition: Wisconsin defines brownfields as abandoned, idled, or under-used industrial or commercial facilities or sites, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

Program titles: All brownfields and voluntary cleanups are conducted in accordance with the Remediation and Redevelopment comprehensive one cleanup program, following the NR 700 rule series cleanup requirements. On June 3, 2006, Wisconsin Act 418 became effective; it contains incentives to promote the cleanup and reuse of contaminated properties.

Liability relief provisions: Program offers two primary forms of end relief after cleanup is completed:

- Case closure letters—Per NR 726 for traditional cleanup process.
- Certificates of Completion (COCs)—For Voluntary Party Liability Exemption (1994; amended 1997 and 1999) process with exemption from liability that is transferable to new owners.

Wisconsin also offers liability exemptions for lenders, local governments, and property owners impacted by contamination from off site.

Wisconsin Act 418 expanded the environmental liability protections that are already in place for local governments and private parties who enter DNR's Voluntary Party Liability Exemption (VPLE) process, s. 292.15, *Wis. Stats.* The

legislation broadens the types of properties which may be eligible for a VPLE to include waste disposal sites that are considered "unlicensed landfills."

Wisconsin Act 418 created a new environmental liability exemption for local governments that acquire title to properties where an "unlicensed landfill" is or may be present on the property. The new exemption in s. 292.24, *Wis. Stats.*, is modeled on the spill law exemption created in 1994 for local governments that acquire properties through tax delinquency, for blight or slum purposes, condemnation, or other specified purposes.

Financial incentives (grants, loans, tax provisions, etc.): All the financial elements noted below are available to all properties as long as they meet the definition of a brownfields.

Legislative or program site eligibility requirements: Any party, including responsible parties (RPs) are eligible. Any type of contamination site is eligible including Leaking Underground Storage Tank (LUST), hazardous waste, spills, etc. After DNR approves environmental investigation and cleanup of an entire property, the voluntary party receives a COC and is protected from future liability. Since 2001, parties can use natural attenuation to get a COC if they pay for environmental insurance through state program. Wisconsin offers other specific liability exemptions:

- Lenders and representatives—Five situations in which lenders are exempt, including if a lender forecloses on a contaminated property.
- Local governments—Municipalities acquiring properties through means such as tax delinquency, blight elimination, or eminent domain are exempt from liability.
- Property owners whose contamination comes from off-site sources are exempt from liability. WDNR was given authority to issue a variety of assurance letters to clarify liability in various situations.

Financial Elements

Assessment and cleanup funding (source, amount, relationship to VCP/brownfields programs, application process, eligibility requirements, dedication to special types of sites such as petroleum, dry cleaners, abandoned drug labs, etc.):

- Brownfields Grant Program—\$14,000,000 (2003-2005 biennium) for public or private use, for investigation, cleanup, and redevelopment; 20% to 50% match required.
- Land Recycling Loan Program—\$20,000,000 for no-interest loans to municipalities, for site assessment, and cleanup; 0.5% service fee.
- Site Assessment Grant Program—\$3,400,000 (2003-2005 biennium) for grants to local governments for site assessment, investigation, demolition, and tank removal; requires 20% match.
- Brownfields Green Space and Public Facilities Grant Program—\$1,000,000 awarded in 2003 in grants to local governments for environmental remediation of brownfields

that will be reused as greenspace, recreation areas, or used by a local government.

- **Blight Elimination and Brownfields Redevelopment (BEBR) Grants**—Uses \$2,500,000 in state-administered Community Development Block Grant (CDBG) funds for small cities (less than 50,000 people) for assessing or remediating sites in a blighted area; covers up to \$100,000 for assessment, and \$500,000 for cleanup.
- **Dry Cleaner Environmental Response Fund**—Funded through industry tax, will reimburse up to \$500,000 per facility to clean up solvent discharges.
- **Environmental Fund**—\$10,000,000–12,000,000 (2001-2003 biennium) available for state-funded cleanups at priority contamination sites including some brownfields.
- **Sustainable Urban Development Zone (SUDZ) Pilot Program**—Provides funds to communities to address area-wide ground water contamination problems.
- **EPA-funded Revolving Loan and Grant Program**—In June 2004, EPA awarded \$4,000,000 to the Wisconsin Brownfields Coalition for the Ready Reuse Initiative, which can fund remediation at petroleum and non-petroleum brownfields sites (in development).

Tax incentives (abatements, credits, etc.):

- **Development Zone Tax Credits**, 50% of remediation costs in designated zones.
- **Business Improvement Districts (BIDs)** use special tax assessments in designated districts to raise revenues for Phase I and II assessments, public improvements, redevelopment staff, and cleanup costs.
- **Environmental Remediation Tax Increment Financing**—Districts can be created by local governments to recoup investigation and remediation costs, with increment based on value-added of the clean site; eligible costs expanded in 1999 to include underground tanks, and container and asbestos removal.

Wisconsin Act 418 amended the Environmental Remediation Tax Incremental District (ERTID) law to make ER TIDs more consistent with other Wisconsin TIDs. It extends the reimbursement period from 16 years to 23 years and makes cancellation of property taxes an eligible ER TID cost. This provision becomes effective October 1, 2006.

- **Counties (and Milwaukee)** can cancel delinquent taxes if owner agrees to clean up contaminated property.
- **Counties (and Milwaukee)** can transfer tax-delinquent brownfields property to a new owner if the new owner agrees to complete cleanup.

Other forms of support (environmental insurance, brownfields redevelopment authorities, etc.): The state is developing the Wisconsin Brownfields Insurance Program to provide insurance to businesses and local governments that are cleaning up and developing brownfields.

Program Elements

Technical Elements

Methods/standards/controls: Wisconsin has performance based cleanup standards (NR 700 rule series) that apply to all cleanup sites including Voluntary Party Liability Exemption (VPLE) sites. Risk-Based Corrective Action (RBCA)-like process is in place; applicants have a choice of cleanup standards for soil contamination—numeric values in regulation, site-specific cleanup standards, or risk-based performance standards. Ground water must meet enforcement standards or demonstrate it will meet standards.

Contaminants covered/excluded: Petroleum, asbestos, lead paint, polychlorinated biphenyls (PCBs) all OK.

Use of long-term stewardship and institutional controls (tracking, oversight, monitoring, reopeners): Wisconsin Act 418 changes the way DNR, Department of Agriculture, Trade and Consumer Protection (DATCP), and Commerce implement closures involving land use conditions to address residual contamination. The state agencies will no longer rely on the use of deed restrictions to ensure that land use conditions placed on a property at the time of closure are maintained over time. Instead, the agencies have specific statutory authority to place these land use conditions on a property, and the owner of the property (or another person who has a legally enforceable responsibility to comply with the requirements, e.g. through a contract) will be responsible for complying with the conditions set out by the state agency.

Wisconsin Act 418 does not change the current environmental situations where the state has in the past and will continue to require land use conditions. Those three general situations are:

- Required maintenance of an engineering control.
- When a building or other structure inhibited full investigation of the contamination, requires an investigation of the extent of residual contamination and completion of any needed remedial actions, or if the building or other structure is removed after the conclusion of the remedial action.
- Impose limitations or other conditions related to the site (e.g., closure using industrial soil standards), in accordance with state agency rules, to ensure that conditions at the property remain protective and lead to appropriate redevelopment of the property.

This provision has two primary components:

- It clarifies that conditions such as a requirement to maintain a protective barrier or an engineering control on top of contaminated soil are the responsibility of whoever is the current property owner (or another person with a legally enforceable responsibility to comply, e.g. a contract).

Wisconsin

- The public is advised of these conditions through an internet registry of properties with this type of closure approval, instead of looking for individual deed restrictions for each property. The registry will include detailed case closure letters that spell out the conditions that must be maintained to ensure that the residual contamination is properly managed. DNR will continue to conduct audits of a certain number of these properties with land use conditions.

Management & Implementation Elements

Voluntary Cleanup Program MOA with EPA: October 1995

Costs to enter program or fees for service: There are fees for most DNR oversight. Flat fees, per NR 749, range from \$500 to \$1,250 depending on the type of technical review requested in the traditional cleanup review process. The cost for VPLE is a \$250 application fee and an oversight fee for DNR staff of \$75 per hour.

Funding source for administrative costs and staff: DNR staff who oversee cleanups are funded from a range of sources, including program fees, various EPA grants, and state funds.

Cleanup Activities

Sites currently in VCP:

- Over 5,000 sites are being cleaned up in the traditional cleanup program, seeking a closure letter.
- 128 active sites are in the VPLE program, seeking a certificate of completion.

Sites completed under VCP: Approximately 18,000 sites have received close-out letters and 57 sites have received COCs.

Benefits (incentives to participate in the VCP, covenants not to sue, etc.): Economic impact information tracked only for the Commerce's brownfields grant program. 88 brownfields projects have received \$50,950,000 in brownfields grants, which will result in:

- Converting 1,350 acres of abandoned or underused environmentally contaminated sites into clean, viable properties.
- An increase of over \$210,000,000 in taxable property values.
- The creation of over 5,860 new jobs.

In addition, several properties have been reused as parks on these types of projects. Wisconsin has a grant program that specifically pays for the cleanup of sites used for parks or public facilities, which began awarding funding in 2003.

Public Participation

Public participation requirements (notice, comment periods, etc.): No information available

Public participation activities (hearing, meetings, etc.): No information available

Statutory Authorities

Wisconsin Statute chapter 292 includes the primary authority for environmental cleanups in Wisconsin including:

- Cleanup requirements for responsible parties (s. 292.11, Wis. Stats).
- Liability exemptions for local governments (s. 292.11(9)(e), Wis. Stats).
- Liability exemptions for contamination from off-site (s. 292.13, Wis. Stats).
- Liability exemption for voluntary cleanups (s. 292.15, Wis. Stats).
- Liability exemption for an "unlicensed landfill" that is or may be present on the property (s. 292.24, Wis. Stats).

The cleanup standards and regulations are in the chapter NR 700 rule series of Wisconsin's Administrative Code and chapter NR 140 has the requirements for ground water cleanup. Chapter NR 168 has the requirements for the Brownfields Site Assessment Grant. In addition, on June 3, 2006, Wisconsin Act 418 became effective; it contains incentives to promote the cleanup and reuse of contaminated properties by amending, expanding, and creating new provisions of the current statutes.